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6 Attorneys for Plaintiff
7 COUPONS, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 COUPONS, INC.,

12 Plaintiff,

13 vs.

14 JOHN STOTTLEMIRE, and DOES 1-10,

15 Defendants.

Case No. 5:07-CV-03457 HRL

**DECLARATION OF DENNIS M. CUSACK
IN SUPPORT OF COUPONS' MOTION TO
DIRECT THE PARTIES TO RETURN TO
EARLY NEUTRAL EVALUATION
PURSUANT TO ADR L.R. 5-2, AND CIVIL
L.R. 7**

Date: January 27, 2009
Time: 10:00 a.m.
Courtroom: 2
Judge: Honorable Howard R. Lloyd

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19 I, Dennis M. Cusack, declare and say:

20 1. I am a partner with Farella Braun + Martel LLP in San Francisco California, and
21 submit this declaration in support of Coupons' Inc.'s motion for this Court to refer the parties to
22 Mr. Harold McElhinny for a continuation of the ENE process.

23 2. Coupons learned through a public records search that Mr. Stottlemire has several
24 outstanding judgment liens against him, including at least one from the IRS. Mr. Stottlemire in
25 conversations with me confirmed this information. Mr. Stottlemire has confirmed with me as
26 well that he is unemployed.

27 3. Shortly after the case was filed, Coupons offered to settle with Mr. Stottlemire
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1 under terms which would have required no payment from Mr. Stottlemire. In February 2008, and
2 on several occasions thereafter, we offered again to settle on terms requiring no payment by Mr.
3 Stottlemire.

4 4. Mr. Stottlemire rejected each of these offers. Instead, in response to the first offer,
5 I am informed and believe, he demanded \$1 million to settle. In March 2008, he demanded
6 \$914,870. On June 9, 2008, he indicated (through a posting on a public website) that his
7 settlement demand was \$1,202,592.27. On October 16, 2008, he said he would settle for a
8 payment of \$300,000. On November 4, 2008, in the courtroom just prior to the hearing, he raised
9 his settlement demand to \$2 million. The stated basis for these demands was his contention that
10 he would have a claim for malicious prosecution against Coupons.

11 5. Stottlemire made no more demands for a cash payment after the Court's
12 November 6, 2009 Order and before the ENE session.

13 6. Stottlemire acknowledged on one or more occasions, after Coupons changed its
14 technology in late 2007/early 2008, that his circumvention method no longer worked.

15 7. I attended the November 13, 2008 ENE session on behalf of Coupons. The parties
16 signed a settlement agreement at the ENE session, shortly after the parties made presentations
17 about the case to Mr. McElhinny.

18 8. Stottlemire subsequently asked that Coupons indemnify Stottlemire for claims by
19 Coupons' customers against Stottlemire. Coupons declined to provide the indemnity.

20 I declare under penalty that the foregoing is true and correct and that I could so
21 competently testify if called upon to do so. Executed in San Francisco, California on
22 December 5, 2008.

23
24 /s/
25 Dennis M. Cusack
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PROOF OF SERVICE

I, the undersigned, declare that I am a resident of the State of California, employed in the County of San Francisco, over the age of eighteen years and not a party to the within action. My business address is: Farella Braun + Martel LLP, 235 Montgomery Street, 17th Floor, San Francisco, California 94104.

On this date I served the within document(s):

**DECLARATION OF DENNIS M. CUSACK IN SUPPORT OF COUPONS' MOTION TO
DIRECT THE PARTIES TO RETURN TO EARLY NEUTRAL EVALUATION
PURSUANT TO ADR L.R. 5-2, AND CIVIL L.R. 7**

X **MAIL:** by placing a true copy thereof, addressed as set forth below and enclosed in a sealed envelope with postage thereon fully prepaid and deposited for collection and mailing with the U.S. Postal Service. I am readily familiar with the ordinary business practice of this office for processing mail.

Harold J. McElhinny
Morrison & Foerster
425 Market Street
San Francisco, CA 94105

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed in San Francisco, California on **December 5, 2008**.

/s/

Lawrence L. Coles